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Referred: Rules

go0809sE

Original sponsor(s): Rules/Governor

1 IN THE SENATE BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 238 (Finance) am  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the power project fund, and to  
7 the powers of the Alaska Energy Authority to finance  
8 and make loans from the power project fund and to  
9 sell waste heat; and providing for an effective  
10 date."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 \* Section 1. AS 44.83.080(16) is amended to read:

13 (16) to recommend to the legislature

14 (A) the issuance of general obligation bonds of the  
15 state to finance the construction of a power project if the  
16 authority first determines that the project cannot be financed by  
17 revenue bonds of the authority at reasonable rates of interest;

18 (B) the pledge of the credit of the state to guarantee  
19 repayment of all or any portion of revenue bonds issued to assist  
20 in construction of power projects;

21 (C) an appropriation from the general fund

22 (i) for debt service on bonds or other project  
23 purposes; or

24 (ii) to reduce the amount of debt financing for  
25 the project;

26 (D) an appropriation to the power project revolving  
27 loan fund for a power project;

28 (E) [REPEALED

29 (F)] development of a project under financing

1 arrangements with other entities using leveraged leases or other  
2 financing methods;

3 ~~(F)~~ [(G)] an appropriation for a power project ac-  
4 quired or constructed under AS 44.83.380 - 44.83.425 (energy  
5 program for Alaska).

6 \* Sec. 2. AS 44.83.080 is amended by adding a new paragraph to read:

7 (17) to sell waste heat directly to retail consumers.

8 \* Sec. 3. AS 44.83.090(a) is amended to read:

9 (a) The authority shall, in addition to the other methods that  
10 [WHICH] it may find advantageous, provide a method by which municipal  
11 electric, rural electric, cooperative electric, or private electric  
12 utilities and regional electric authorities, or other persons au-  
13 thorized by law to engage in the distribution of electricity may  
14 secure a reasonable share of the power generated by a project, or any  
15 interest in a project, or for any right to the power and shall sell  
16 the power or cause the power to be sold at the lowest reasonable  
17 prices that [WHICH] cover the full cost of the electricity or ser-  
18 vices, including capital and operating costs, debt coverage as con-  
19 sidered appropriate by the authority, and other charges that may be  
20 authorized by this chapter. Notwithstanding the provisions of this  
21 subsection, the authority may sell waste heat directly to retail  
22 consumers. Except for a contract or lease entered into under AS 44.-  
23 83.380 - 44.83.425, a contract or lease for the sale, transmission,  
24 and distribution of power generated by a project or any right to the  
25 capacity of it shall provide:

26 (1) for payment of all operating and maintenance expenses  
27 of a project and costs of renewals, replacements, and improvements of  
28 it;

29 (2) for interest on and amortization charges sufficient to

1 retire bonds of the authority issued for the project and reserves for  
2 them, plus a debt service coverage factor as may be determined by the  
3 authority to be necessary for the marketability of its bonds;

4 (3) for monitoring of the project by the authority or its  
5 agents;

6 (4) for full and complete disclosure to the authority of  
7 all factors of costs in the transmission and distribution of power, so  
8 that rates to any persons may be fixed initially in the contract or  
9 lease and may be adjusted from time to time on the basis of true cost  
10 data;

11 (5) for periodic revisions of the service and rates to  
12 persons on the basis of accurate cost data obtained by the accounting  
13 methods and systems approved by the directors and in furtherance and  
14 effectuation of the policy declared in this chapter;

15 (6) for the cancellation and termination of a contract or  
16 lease upon violation of its terms by any person;

17 (7) for security for performance as the authority may  
18 consider practicable and advisable, including provisions assuring the  
19 continuance of the distribution and transmission of power generated by  
20 a project and the use of its facilities for these purposes; and

21 (8) other terms not inconsistent with the provisions and  
22 policy of this chapter as the authority may consider advisable.

23 \* Sec. 4. AS 44.83.170(a) is amended to read:

24 (a) There is established as a separate fund the power project  
25 revolving loan fund. The fund consists of

26 (1) appropriations to the fund;

27 (2) repayments to the fund of principal on loans made from  
28 the fund;

29 (3) payments of interest on loans made from the fund;

1                   (4) income from investment of money in the fund; and  
2                   (5) the proceeds of bonds issued under AS 44.83.171 [THAT  
3 SHALL BE DISTINCT FROM ANY OTHER MONEY OR FUNDS OF THE AUTHORITY, AND  
4 THAT INCLUDES ONLY MONEY APPROPRIATED BY THE LEGISLATURE].

5 \* Sec. 5. AS 44.83.170(b) is amended to read:

6                   (b) The authority may make loans from the power project revolv-  
7 ing loan fund

8                   (1) to electric utilities, regional electric authorities,  
9 municipalities, [CITIES, BOROUGHS,] regional and village corporations,  
10 village councils, and nonprofit marketing cooperatives to pay the  
11 costs of

12                   (A) reconnaissance studies, feasibility studies,  
13 license and permit applications, preconstruction engineering, and  
14 design of power projects;

15                   (B) constructing, acquiring, equipping, modifying,  
16 improving, and expanding [SMALL-SCALE] power projects [PRODUCTION  
17 FACILITIES], conservation facilities, bulk fuel storage facil-  
18 ities, and transmission and distribution facilities, including  
19 energy production, transmission, and distribution, and waste  
20 energy conservation facilities that depend on fossil fuel, wind  
21 power, tidal, geothermal, biomass, hydroelectric, solar, or other  
22 nonnuclear [NON-NUCLEAR] energy sources; [AND]

23                   (C) reconnaissance studies, preconstruction engineer-  
24 ing, design, construction, equipping, modification, and expansion  
25 of potable water supply including surface storage and groundwater  
26 sources and transmission of water from surface storage to exist-  
27 ing distribution systems;

28                   (D) acquisition of bulk fuel or proven reserves of  
29 gas, oil, coal, geothermal, or other energy resources; and

1                                   (E) consumer end-use improvements to reduce demand for  
2                                   energy;  
3                                   (2) to school districts, regional educational attendance  
4                                   areas, regional housing authorities, and business enterprises to pay  
5                                   the cost of  
6                                   (A) waste energy conservation facilities;  
7                                   (B) consumer end-use improvements to reduce demand for  
8                                   energy;  
9                                   (C) acquisition, construction, or repair of bulk fuel  
10                                   storage facilities and acquisition of fuel reserves;  
11                                   (D) electric distribution facilities for housing  
12                                   development by regional housing authorities;  
13                                   (E) power generation facilities only when those facil-  
14                                   ities provide wholesale power or emergency reserve power for a  
15                                   community and the utility certificated to serve that community  
16                                   has formally recommended approval of the loan application;  
17                                   (3) to a borrower for a power project if  
18                                   (A) the loan is entered into under a leveraged lease  
19                                   financing arrangement;  
20                                   (B) the party that will be responsible for the power  
21                                   project is an electric utility, regional electric authority,  
22                                   municipality, [CITY, BOROUGH,] regional or village corporation,  
23                                   village council, school district, regional educational attendance  
24                                   area, regional housing authority, business enterprise, or non-  
25                                   profit marketing cooperative; and  
26                                   (C) the borrower seeking the loan demonstrates to the  
27                                   authority that the financing arrangement for the power project  
28                                   will reduce project financing costs below costs of comparable  
29                                   public power projects.

1 \* Sec. 6. AS 44.83.170(c) is amended to read:

2 (c) Before making a loan from the power project revolving loan  
3 fund, the authority shall, by regulation, specify

4 (1) standards for the eligibility of borrowers and the  
5 types of projects to be financed with loans;

6 (2) standards regarding the technical and economic viabil-  
7 ity and revenue self-sufficiency of eligible projects;

8 (3) collateral or other security required for loans;

9 (4) the terms and conditions of loans;

10 (5) criteria to establish financial feasibility and to  
11 measure the amount of state assistance necessary for particular proj-  
12 ects to meet the financial feasibility criteria; and

13 (6) other relevant criteria, standards, or procedures.

14 \* Sec. 7. AS 44.83.170(e) is amended to read:

15 (e) Repayment of the loans shall be secured in any manner that  
16 the authority determines is feasible to assure prompt repayment under  
17 a loan agreement entered into with the borrower. The authority may  
18 make an unsecured loan from the power project revolving loan fund to a  
19 borrower regulated by the Alaska Public Utilities Commission under  
20 AS 42.05 if the borrower has a substantial history of repaying long-  
21 term loans and the capacity to repay the loan. Under a loan agree-  
22 ment, repayment may be deferred for 10 years or until the project for  
23 which the loan is made has achieved earnings from its operations  
24 sufficient to pay the loan, whichever is earlier.

25 \* Sec. 8. AS 44.83.170(f) is amended to read:

26 (f) Power projects are subject to the following limitations on  
27 interest and specific restrictions:

28 (1) power projects for which loans are outstanding from the  
29 former water resources revolving loan fund under former AS 45.86 on

1 July 13, 1978, may receive additional financing from the power project  
2 revolving loan fund; the additional financing, if granted, must be

3 (A) granted for a term not exceeding 50 years;

4 (B) granted at an interest rate of not less than three  
5 or more than five percent a year on the unpaid balance;

6 (C) conditioned on the repayment of loan principal and  
7 interest to begin on the earlier of

8 (i) the date of the start of commercial operation  
9 of the project; or

10 (ii) 10 years from the date the loan is granted;

11 (2) loans for power projects shall be granted

12 (A) for a term not to exceed 50 years; and

13 (B) at an interest rate that is not less than five  
14 percent and that is the lesser of

15 (i) a rate equal to the percentage that is the  
16 average weekly yield of municipal bonds for the 12 months  
17 preceding the date of the loan, as determined by the author-  
18 ity from municipal bond yield rates reported in the 30-year  
19 revenue index of the Weekly Bond Buyer; or

20 (ii) a rate determined by the authority that  
21 allows the project to meet criteria of financial feasibility  
22 established under (c) of this section.

23 \* Sec. 9. AS 44.83.170(h) is amended to read:

24 (h) The legislature may forgive the repayment of a loan made  
25 from the power project revolving loan fund for a reconnaissance study  
26 or a feasibility study when the authority finds that the power project  
27 for which the loan was made is not feasible.

28 \* Sec. 10. AS 44.83 is amended by adding a new section to article 5 to  
29 read:

1           Sec. 44.83.171. POWER PROJECT BONDS. (a) The authority may  
2 borrow money and may issue bonds to make or refinance loans for proj-  
3 ects authorized under AS 44.83.170. The terms of loans made or refi-  
4 nanced with the proceeds of bonds authorized by this section are  
5 subject only to AS 44.83.170(a) - (e).

6           (b) To enhance the marketability of bonds issued under this  
7 section,

8           (1) the authority may pledge the amounts in the power  
9 project revolving loan fund, including appropriated money and any  
10 income to the fund from any source, as security for bonds issued under  
11 this section; those amounts shall be deposited by the authority with a  
12 trustee in order to further enhance the security of the bonds; the  
13 trustee shall disburse the funds annually under paragraph (2) of this  
14 section; and

15           (2) the authority may use all amounts in the power project  
16 revolving loan fund, from any source, to make principal and interest  
17 payments required on bonds issued under this section, and to pay the  
18 administrative costs of the power project revolving loan fund and of  
19 the bonds issued under this section; principal and interest repayments  
20 on loans made from appropriations and not otherwise used under this  
21 paragraph by the end of each fiscal year shall be deposited in the  
22 general fund.

23           (c) The authority may notify the head of an agency of the state,  
24 in writing, that a municipality is in default on the repayment of  
25 principal or interest on amounts financed by the sale of bonds under  
26 this section. After the notice is given, and notwithstanding any  
27 other provision of law, the agency shall, to the extent that the  
28 municipality is in default, withhold payment of money that the munic-  
29 ipality would otherwise be entitled to receive, and shall pay the

1 money to the authority to pay principal and interest on bonds of the  
2 authority issued under this section.

3 (d) If a utility is a borrower from the power project revolving  
4 loan fund and is in default on the repayment of principal or interest  
5 on amounts financed by the sale of bonds under this section, the  
6 authority may, to the extent of the utility's default, withhold any  
7 payments owing to the utility under the power cost equalization pro-  
8 gram (AS 44.83.162 - 44.83.164), and shall pay the money to the power  
9 project revolving loan fund.

10 \* Sec. 11. AS 44.83.181(c) is amended to read:

11 (c) The plan of finance must include recommendations of the most  
12 appropriate means to finance a project, including, but not limited to,

- 13 (1) the issuance of revenue bonds of the authority;  
14 (2) the issuance of  
15 (A) general obligation bonds of the state; or  
16 (B) revenue bonds of the authority that are guaranteed  
17 or partially guaranteed by the state;  
18 (3) an appropriation from the general fund  
19 (A) to pay debt service on bonds or for other project  
20 purposes; or  
21 (B) to reduce the amount of debt financing for the  
22 project;  
23 (4) a loan from the general fund;  
24 (5) financing arrangements with other entities using le-  
25 veraged leases or other financing methods;  
26 (6) assistance from any federal agency, including, but not  
27 limited to, the Rural Electrification Administration;  
28 (7) a loan from the power project revolving loan fund under  
29 AS 44.83.170(a); or

1 (8) any combination of financing arrangements listed in  
2 this subsection.

3 \* Sec. 12. AS 44.83.187(a) is amended to read:

4 (a) The provisions of AS 44.83.177 - 44.83.185 and 44.83.189  
5 apply only to a proposed new project that will generate more than 1.5  
6 megawatts of power and

7 (1) requires an appropriation from the state general fund  
8 [.] or a loan or appropriation from the power project revolving loan  
9 fund [., OR FROM THE RENEWABLE RESOURCES FUNDS]; or

10 (2) is based on a plan of finance that requires the issu-  
11 ance of general obligation bonds or other pledge of the credit of the  
12 state.

13 \* Sec. 13. AS 44.83.940 is amended to read:

14 Sec. 44.83.940. ANNUAL REPORT. Before March 1 of each year, the  
15 authority shall submit to the governor and the legislature a compre-  
16 hensive report describing operations, income, and expenditures, in-  
17 cluding a detailed accounting of the loans made from and income  
18 received by the power project revolving loan fund, for the preceding  
19 12-month period.

20 \* Sec. 14. AS 44.83.990 is amended by adding a new paragraph to read:

21 (10) "business enterprise" means a single proprietorship,  
22 corporation, firm, partnership, or other association of persons or-  
23 ganized in any manner, for any business purpose, other than on a  
24 nonprofit basis, that sells or transports electricity or waste heat in  
25 compliance with all applicable federal and state statutes and regula-  
26 tions.

27 \* Sec. 15. AS 44.83.170(g) and 44.83.990(9) are repealed.

28 \* Sec. 16. This Act takes effect immediately under AS 01.10.070(c).